

Lala Phakki Lal Vs. Brij Mohan Singh Alias Bachcha Singh

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Court : Allahabad

Decided On : Jan-17-1920

Reported in : AIR1920All122; 54Ind.Cas.805

Judge : P.C. Banerji, J.

Appellant : Lala Phakki Lal

Respondent : Brij Mohan Singh Alias Bachcha Singh

Judgement :

1. In this case the decree-holder applied for attachment of certain trees on four plots of land of which the judgment-debtor is the ex-proprietary tenant. Some of these trees are fruit-bearing trees and Ors. are timber trees. Upon the objection of the judgment-debtor the Court below has disallowed the application of the decree holder and he has preferred this appeal. In my opinion, the decision of the learned Subordinate Judge is correct. The trees existing on an ex-proprietary holding are appurtenant to the holding and are not liable to attachment and sale in execution of a decree in the same way as the holding itself is not liable to attachment and sale. There can be no doubt that an ex-proprietary holding cannot be sold in execution of a decree in view of the provisions of the Tenancy Act. On the principles which apply to the land itself, the trees which exist on the land and appertain to it cannot be sold. The case is fully covered by the decision of the Full Bench in Jugal v. Beoki Nandan 9 A. 88 (F.B.). The case of Lalman v. Mannu Lai A.W.N. (1883) 175 : 6 A. 19 is distinguishable. The facts in that case were

perfectly different and the question which arose in it was not the same as the question involved in the present case. The learned Vakil for the appellant contends that the object of the decree-holder is to sell the fruit of the trees mentioned in the application for execution. If the decree-holder wishes to sell the produce of the fruit-bearing trees as the property of the judgment-debtor, his application should be for the sale of the produce as it comes into existence and not for the sale of the trees, as is the application in the present case. I dismiss the application with costs, including fees on the higher scale.

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